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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 JOE FASANO, Individually and
4 on Behalf of All Others
Similarly Situated,

5 Plaintiffs,

6 v.

16 Civ. 8759 (KPF)

7 GUOQING LI, *et al.*,

Telephone Conference

8 Defendants.

9 -----x

New York, N.Y.

10 March 8, 2017

11 11:15 a.m.

12 Before:

13 HON. KATHERINE POLK FAILLA,

14 District Judge

15 APPEARANCES

16 SADIS & GOLDBERG LLP

Attorneys for Plaintiffs

17 BY: SAMUEL J. LIEBERMAN (via speakerphone)

18 O'MELVENY & MYERS LLP

Attorneys for Served Defendants

19 BY: ABBY F. RUDZIN

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1 (In the robing room)

2 THE COURT: Mr. Lieberman, this is at least in part
3 principally a motion to decide lead plaintiff and lead
4 plaintiffs' counsel, and you may recall from our last
5 conference, which was on defense counsel's *forum non conveniens*
6 motion, that what we wanted to do was to figure out who would
7 be plaintiffs' counsel and who therefore would be responding to
8 the served defendants' motion.

9 Why are you not here?

10 MR. LIEBERMAN: Your Honor, I completely
11 misunderstood, in the absence of an opposition or response on
12 the motion, and I apologize profusely for misunderstanding the
13 schedule. I can be there in person within the half hour, and
14 Mr. Lopez indicated that appearing by telephone was possible.
15 It was my misunderstanding, and I apologize for the
16 inconvenience to the Court at this time. I'm very sorry about
17 this.

18 THE COURT: Sir, just to be clear, yes, you can as a
19 theoretical matter be here at some point later today, but
20 Ms. Rudzin has been waiting patiently and not being able to do
21 work for other cases on which she might bill, because you are
22 not here. And secondly, yes, Mr. Lopez said that this could be
23 done by phone, but that's only because you did not have the
24 courtesy of showing up. It does not bode well for your
25 application for lead plaintiffs' counsel that you would have

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1 taken the initiative not to come today.

2 Was there something in either of my scheduling orders
3 that suggested you did not have to appear?

4 MR. LIEBERMAN: Your Honor, I misunderstood. This is
5 my misunderstanding, and I apologize as well to Ms. Rudzin.
6 This is my mistake. This is wrong, and I misunderstood the
7 sequencing, and I'm happy to do whatever it takes to address
8 these issues because I misunderstood the schedule. This is not
9 about anything that you have done here, so I apologize for the
10 misunderstanding, and it was my misunderstanding.

11 THE COURT: Let me understand this, sir. Is it
12 correct, then, at this time that it is only Mr. Fasano and the
13 two Altimeo entities who have put in, as it were, to be lead
14 plaintiff in this case?

15 MR. LIEBERMAN: That's right. No one has opposed. No
16 one else has put in. That's right.

17 THE COURT: May I understand, please, the
18 relationship, if any, between Mr. Fasano and either of the
19 Altimeo entities, because I thought I had two here, am I
20 correct, Altimeo Asset Management and Altimeo Optimum Fund?

21 MR. LIEBERMAN: That's right. Mr. Fasano has no
22 relationship as far as I'm aware, other than both having been
23 ADS holders of the E-Commerce China Dangdang company.

24 THE COURT: I understand that. They have all decided
25 to serve as colead plaintiffs or at least it would be Fasano

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1 and Asset Management; Altimeo's other entity, the Optimum Fund,
2 is not offering to be lead plaintiff, sir?

3 MR. LIEBERMAN: Your Honor, Optimum Fund is. The
4 Optimum Fund is a holder and Asset Management is the manager of
5 the Optimum Fund, so with respect to certain rights, the Asset
6 Management arm has the power to act, but it is the fund itself
7 that was the holder.

8 THE COURT: Let me ask a different question, sir. Who
9 precisely is seeking to serve as colead plaintiff with
10 Mr. Fasano?

11 MR. LIEBERMAN: All three are seeking, so the Optimum
12 Fund and Altimeo Asset Management.

13 THE COURT: OK. You'll excuse me if this sounds
14 imprecise, but why do I need three colead plaintiffs,
15 especially since right now I've got nobody else who is
16 interested? It just seems to me that I would only need one,
17 but tell me why I need three.

18 MR. LIEBERMAN: It is the Court's discretion. I think
19 the reason that we ask that the three be permitted is that from
20 those who have approached us, these are the parties that have
21 shown interest in serving as leadership for this action.
22 Mr. Fasano is someone who is interested. Both of them have
23 indicated that they'd like to participate, and given that, from
24 our perspective as counsel, having been approached by both, we
25 don't discourage any of them from applying.

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1 THE COURT: My concern is simply at some later date
2 I'm going to be asked to give some extra something to
3 individuals or entities who, or that, have served as lead
4 plaintiff, and I'm just concerned about that. Certainly if
5 Mr. Fasano does extra work than other class members, he may be
6 entitled to a class representative award, but I'm just trying
7 to ensure that Mr. Fasano and the Altimeo entities aren't
8 seeking to serve as colead plaintiffs simply to engender
9 unnecessary expenses in the conduct of this litigation.

10 Can you give me some assurance that that will not
11 happen?

12 MR. LIEBERMAN: Yes, your Honor. No. 1, that is not
13 their goal. Their goal is more to have say in the operation of
14 the litigation; we haven't given consideration to seeking an
15 award. I know you mention it's possible they could ask for
16 one. What I can tell you, and you can put this in the record,
17 is that we will not be seeking duplicative awards, should there
18 be any award, and I really haven't had an opportunity to speak
19 with the clients about it, whether they would at all, but such
20 award would be sought apportioning it out as if it was one
21 request for an award. We'll do everything we can to avoid any
22 duplication or requests based on duplication.

23 THE COURT: Here's my second question, sir. If you're
24 serving as lead plaintiffs' counsel, and that's a big "if"
25 given your nonappearance this morning, you would have to be

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1 reaching out to each of Mr. Fasano and the Altimeo entities, so
2 doesn't that necessarily increase, even on an incremental
3 level, the amount of work and coordination that you'll have to
4 do?

5 MR. LIEBERMAN: I can't foreclose the possibility that
6 it would be an incremental amount. However, in terms of
7 setting up conference calls, I have been able to manage the
8 amount of time as if there is only one party thus far because
9 I'm able to give updates and set up meetings where both can
10 attend.

11 THE COURT: All right. I will be mindful, as will
12 you, of the fact that I don't want there to be unnecessary
13 litigation expenses, attorney's fees or otherwise, simply
14 because three purchasers of the securities in question wish to
15 participate.

16 All right, sir. I have read your papers. What else
17 do you want me to know?

18 MR. LIEBERMAN: Other than the papers and satisfying
19 that, you have the submission of the parties' interests in the
20 litigation based on their holdings. You also have my firm's
21 biography and our experience prosecuting similar matters, so we
22 would rest on the papers. Again, I just wanted to reiterate my
23 apologies for misunderstanding the schedule and apologize for
24 the inconvenience to the Court, and if coming down and showing
25 up later in the day can in any way be helpful, I'm happy to do

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1 that.

2 THE COURT: That will not be necessary. I have other
3 matters on the calendar, and I don't want those to be
4 interrupted.

5 All right, then. Inasmuch as I have no other entity
6 hoping to serve as lead plaintiffs' counsel and I only have
7 these three purchasers who are seeking to serve as colead
8 plaintiffs, I will be granting the motion. I have considered
9 the PSLRA provisions regarding the presumptions of the most
10 adequate plaintiff and the standards that are set forth there
11 in Section 78u-4. The three requirements here are satisfied:
12 They have filed a complaint in the matter; they have the
13 largest financial interest of any class member, and we'll see
14 at some later date whether they satisfy the prerequisites of
15 Rule 23 of the Federal Rules of Civil Procedure, but I don't
16 think that's an issue that I need to resolve right now.

17 Certainly typicality and adequacy of representation
18 are the only things that I really need to look at at this time,
19 and I can. Indeed, looking at cases like *Foley v. Transocean*
20 *Ltd.*, a Southern District decision from 2011, I really only
21 need a preliminary showing of typicality and adequacy.
22 Mr. Fasano and the Altimeo entities have made this showing and
23 I will allow it, and I will at this time, based on the written
24 submission, more than today's endeavors, appoint Sadis &
25 Goldberg as counsel.

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1 Mr. Lieberman, you've got to show up next time. Don't
2 apologize again, because that's not going to help you. Just
3 show up or understand that if it appears that your firm and
4 your clients are not that interested in pursuing this case,
5 there are things that I can do to reflect that in my docket as
6 well.

7 Now that I have the parties here and I've forced
8 Ms. Rudzin to be here all of this time, there is something else
9 I'd like to understand. Mr. Lieberman, there was a schedule
10 set at our last conference regarding the *forum non conveniens*
11 motion. I am assuming that that is a schedule that your firm
12 can meet. Am I correct?

13 MR. LIEBERMAN: Yes, your Honor.

14 THE COURT: All right. Separately, and I appreciate
15 that I am keeping Ms. Rudzin here, I do not understand, or at
16 least I have concerns that Ms. Lu has been adequately served.
17 There is some strangeness about the affidavit of her service.
18 It looks almost like she resisted efforts to serve her.
19 There's a rider that I'm not entirely sure of that seems to
20 list everybody else.

21 Could you tell me, please, are you believing, sir,
22 that Ms. Lu was adequately served in this case?

23 MR. LIEBERMAN: Well, we went to the office of the
24 firm, and I will go back to the discussions from the last
25 conference. We went to the office where she serves as

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1 director, which is the Yum China Holdings Inc. office of
2 plaintiffs, and she is a director there. This is the primary
3 place of business, and we provided the summons to someone
4 there, and the person accepted it and then mailed it back.

5 We're reporting on that effort here. We believe that
6 that is notice, and we are concerned about a dodging of
7 service, why somebody would be advertising themselves publicly,
8 and she's actually on the board of this company. And in the
9 last conference, it was counsel for the other entities who said
10 there are states that allow you to serve at the office where
11 you serve as a director. We believe that this does give
12 notice. We are also still following up in China, but we
13 provided this affidavit as well.

14 THE COURT: All right. Is that a long way of saying
15 you believe she has been properly served?

16 MR. LIEBERMAN: We believe this will satisfy it, yes.

17 THE COURT: All right. We'll see.

18 Ms. Rudzin, just to be clear, you would not be
19 representing Ms. Lu, or she has not asked you to represent her
20 at this time?

21 MS. RUDZIN: Right. I've never even spoken with her.

22 THE COURT: If she asked you, would you be
23 representing her, or are there conflicts with the folks that
24 you do represent that would prevent you from doing that?

25 MS. RUDZIN: I don't see a conflict right now, but I

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1 haven't been asked to represent her, so I haven't thought about
2 it that much.

3 Your Honor, just because Mr. Lieberman did speak about
4 me and what I said at the last conference about how some states
5 have laws that say you can serve directors of a company by
6 serving the company's registered agent, my understanding, and I
7 have no idea if Texas has such a law, but the laws I do know,
8 for example, the law in Delaware only allows that when the suit
9 arises out of the defendant's service as a director of that
10 company that's being served.

11 THE COURT: That was my understanding as well.

12 MS. RUDZIN: I don't know if Mr. Lieberman is hanging
13 his hat on that kind of statute in Texas, which would seem to
14 be facially inapplicable, or if he's trying to say that somehow
15 Ms. Lu actually physically works there, which I don't believe
16 is correct, so I'm not sure why he thinks serving a company
17 that has an outside director constitutes service on the outside
18 director, particularly when he's already alleged that she lives
19 in another country.

20 THE COURT: That's where we are. OK.

21 Mr. Lieberman, in our prior conference you had
22 discussed the possibility of making an application for
23 substituted service. I don't know what has happened since the
24 14th of February, or thereabouts, the middle of February when
25 we last met, but is it your contemplation, sir, that in

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1 opposing what is now a scheduled *forum non conveniens* motion,
2 when you file your opposition, would you be adding to that an
3 application for substituted service or alternate service?

4 MR. LIEBERMAN: Your Honor, the answer to that is that
5 it depends on the status of ongoing efforts to serve in China.
6 We did get an update on where that stood. We have been
7 informed by the International Legal Cooperation Center that the
8 documents have been delivered to a court in China to begin
9 processing service internally. If those efforts are proceeding
10 and we have service effectuated, and we got a prediction of
11 something in the neighborhood of a month from February 24,
12 which is when we last got an update on service. We made
13 service in mid-January through the Hague process. We got an
14 update on February 24, and we're monitoring that. The vagaries
15 of service in China are such that I can't give a full
16 guarantee, I really have to monitor it on an ongoing basis.
17 What we've been doing is monitoring and calling to stay on top
18 of the service process there.

19 If we are able to effectuate service promptly, by the
20 end of March, then we may not have a ground for seeking
21 substitute service. On the other hand, if as is frequently the
22 case service efforts get bogged down and the effort is not
23 completed by April 28, it's agreed we would expect to use the
24 leave for filing extra pages to seek substitute service. I'm
25 hoping we won't have to.

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1 THE COURT: All right.

2 MR. LIEBERMAN: But it's possible we still may.

3 THE COURT: All right. I can hope as well. That's
4 almost two months from now, so perhaps there will be more
5 progress on that front, but I did want to ask because we had
6 talked about it previously.

7 Ms. Rudzin, is there anything else you'd like to bring
8 to my attention while we're here?

9 MS. RUDZIN: No. Thank you.

10 THE COURT: Mr. Lieberman, anything else, sir?

11 MR. LIEBERMAN: No. That's it. We will update the
12 Court if we get confirmation of service before that because
13 your Honor had mentioned last time that as a matter of prudence
14 you'd want to wait and see what would happen, so should we get
15 service or confirmation of service before that, we will update
16 the Court accordingly.

17 THE COURT: I appreciate that. Two things,
18 Mr. Lieberman. No. 1, could you please arrange to obtain a
19 transcript of this conference in the ordinary course, and if
20 you order it I will receive a copy electronically; you don't
21 have to send it to me.

22 And thing 2, if you have a form of order for
23 appointment of lead plaintiffs' counsel and lead plaintiffs,
24 you may email it to the chambers' email inbox -- you don't have
25 to file it on ECF -- copying Ms. Rudzin, and we will look at

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1 that. Otherwise we'll do it ourselves, but some folks have
2 these lined up and I'll at least look at the ones that they've
3 done.

4 MR. LIEBERMAN: We'll get that in to the Court today.

5 THE COURT: Thank you.

6 Mr. Lieberman, anything else, sir?

7 MR. LIEBERMAN: That is all, your Honor. Thank you
8 for your understanding.

9 THE COURT: All right. Thank you both very much.

10 (Adjourned)